

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6672

BILL NUMBER: HB 1222

DATE PREPARED: Jan 31, 2001

BILL AMENDED: Jan 30, 2001

SUBJECT: Telephone Solicitations.

FISCAL ANALYST: John Parkey

PHONE NUMBER: 232-9854

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill requires written authorization from a customer in the form of a letter of agency before a telecommunications provider may bill the customer for a charge incurred by a third party. The bill defines "additional telecommunications service".

The bill requires the Consumer Protection Division of the Office of the Attorney General to publish a listing of telephone numbers of persons who do not wish to be solicited by telephone. The bill prohibits a telephone solicitor from calling a number that appears in the quarterly listing published by the Division.

The bill establishes the Consumer Protection Division Telephone Solicitation Fund. The bill provides that any money in the fund in excess of \$200,000 must be transferred to the state General Fund.

The bill provides that the Attorney General may employ outside counsel to represent the state in actions filed under the statute.

The bill provides that the Attorney General may recover all money a telephone solicitor obtained through violation of the statute, reasonable attorney's fees, and costs of the action filed under the statute.

The bill requires a telephone solicitor who makes an unsolicited telephone call to state the solicitor's name and business immediately upon telephone contact with a consumer. The bill establishes other requirements that a telephone solicitor must meet before a contract made under a telephone sales call is valid.

It also establishes civil remedies and criminal penalties for violations.

The bill also requires the Consumer Protection Division of the Office of the Attorney General to notify Indiana residents of the rights and duties created by these provisions.

Effective Date: July 1, 2001.

Explanation of State Expenditures: (Revised) This bill will require the Consumer Protection Division of the Office of the Attorney General to maintain a listing of telephone numbers of individuals who do not wish to be solicited by telephone. The bill will also require the Division to publish a quarterly listing of the phone numbers of those individuals and make the list available to organizations and businesses that make telemarketing calls. The bill also requires the Division to notify Indiana residents of their rights under the bill and requires the Division to investigate complaints concerning violations of the provisions listed above.

It is difficult to determine the exact cost of implementing this proposal. Kentucky's Office of the Attorney General has maintained a similar, yet less extensive, telephone solicitation no-call list. As of September 2000, over 55,000 citizens had been placed on the list. The annual cost of maintaining Kentucky's list is approximately \$200,000. This estimate includes the costs associated with printing, additional staffing, advertising, telephone line installation and monthly phone bills, supplies, and postage. Currently, Kentucky's no-call list is maintained by one member of the Kentucky Attorney General's Office staff.

Computer Business Services Inc., a private firm which manages do-not-call programs for the states of Georgia and Oregon, estimates that the cost of listing a single phone number ranges between \$4 and \$6 annually.

The provisions requiring the Division to publish a quarterly listing, notify Indiana residents of their rights and duties, and investigate complaints, may increase the Division's expenses. The total cost of the program will depend on the number of Indiana residents who will want to add their phone numbers to the do-not-call list. A portion of the program's cost may be offset from fees collected and deposited into the Consumer Protection Division Telephone Solicitation Fund (see Explanation of State Revenues).

If money collected from the Telephone Solicitation Fund does not cover the bill's expenses, the remaining funds and resources required could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. The Office of the Attorney General reverted \$499,566 from its operating account at the end of FY 2000. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: (Revised) *Slamming and Cramming Provisions:* The bill adds certain other telecommunications services that cannot be billed to a telephone customer without the customer's consent. The Indiana Utility Regulatory Commission may impose a fine on telecommunication providers who violate this provision of up to \$2,500 for each offense. These fines would be deposited into the state General Fund.

Telephone Solicitor Revenue: The bill requires that the Division provide the listing, for a fee, to telephone solicitors upon request. The fee charged by the Division for the list is limited to the amount necessary to reimburse the Division for the cost of providing the listing to telephone solicitors. The fees collected from telephone solicitors are to be deposited in the Consumer Protection Division Telephone Solicitation Fund, which is established by this bill for the purpose of administering the program. Money in the fund does not revert to the State General Fund at the end of a state fiscal year unless the amount in the fund exceeds \$200,000 at the end of a particular fiscal year.

Penalty Provisions: A telephone solicitor who fails to comply with the above provisions commits a deceptive act that is actionable by the Office of the Attorney General. If convicted, the court may order the solicitor to pay to the state the reasonable costs of the Office of the Attorney General's investigation and prosecution related to the action.

The bill makes it a Class B misdemeanor for first time violations of the provisions related to the do-not-call listing. Repeat offenses are a Class A misdemeanor. Persons who violate provisions of the bill related to contracts and transactions completed over the phone commit a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000, while the maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. A Class B misdemeanor is punishable by up to 180 days in jail. The average cost per day of detaining a defendant is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Consumer Protection Division of the Office of the Attorney General; Legislative Services Agency; Indiana Utility Regulatory Commission.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: State of Indiana Attorney General's Office; Consumer Protection Division of the Office of the Attorney General, State of Kentucky, (502) 696-5398; Bill Bennet, Executive Director, Computer Business Services, Inc., (912) 924-4408; Indiana Sheriffs Association; Department of Correction.